

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**WESTRUM FARMS, INC.
Facility ID# 58962**

**ADMINISTRATIVE CONSENT ORDER
NO. 2008-AFO- 33**

TO: Kyle S. Westrum, Registered Agent
Westrum Farms, Inc.
1514 350th St.
Stratford, IA 50249

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Westrum Farms, Inc. (Westrum) for the purpose of resolving issues pertaining to failure to retain manure, failure to notify of a manure release, and improper manure discharge into a tile intake. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Eric Wiklund, Field Office 2
Iowa Department of Natural Resources
2300 15th St. SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa

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Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Westrum Farms, Inc. facility is a Small Animal Feeding Operation (SAFO) located at NW ¼ Section 10, Marion Township, Hamilton County, Iowa. The Westrum facility contains an existing 600 animal units. The facility is currently adding building space and manure storage and will be a 1,250 head farrowing unit when completed.

2. On October 15, 2007, DNR Field Office 2 responded to a complaint that manure had been released from a broken manure transfer pipe at the Westrum facility. Subsequently, Eric Wiklund, environmental specialist for DNR Field Office 2, met with Kyle Westrum to investigate the complaint. Mr. Wiklund observed a broken manure transfer pipe on the southwest corner of the east building. There was a large amount of spilled manure around the broken transfer pipe and all along the west side of the building. Mr. Westrum explained that the pipe was broken when a four wheel drive tractor drove over the pipe on October 8, 2007. Due to impending rainfall, Mr. Westrum dug a trench to divert the rainfall away from the facility on October 13, 2007. Mr. Wiklund observed that this trench had been dug approximately 20 feet from the broken manure pipe to the east side of building. This area then drained directly to a tile intake at the edge of the corn field. Mr. Wiklund observed that manure contaminated water was discharging to the intake. A field test indicated that the water discharging to the tile intake was very high in ammonia. Mr. Wiklund also collected samples from the ditch that was dug to divert rainwater and from material entering the tile intake. The sample results were as follows:

Location	CBOD5	NH3	Total Suspended Solids (TSS)
Westrum Ditch	620 mg/L	150 mg/L	310 mg/L
Westrum Intake	29 mg/L	12 mg/L	29 mg/L

3. On October 16, 2007, Mr. Wiklund returned to the site to follow up and to investigate a complaint that manure was leaking from two other buildings at the Westrum facility. Mr. Wiklund observed that manure was discharging from two additional buildings. One discharge was contained between two buildings; the other had ponded in a low grassy area and then discharged to a low area in the cornfield. Mr. Wiklund informed Mr. Westrum that these leaks were also violations. Mr. Wiklund collected samples from the bridge at the receiving stream and from the overflowing building. The sample results were as follows:

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Location	CBOD5	NH3	Total Suspended Solids (TSS)
Westrum Bridge	< 2 mg/L	0.36 mg/L	5 mg/L
Westrum West Leak	1,900 mg/L	1,000 mg/L	24,000 mg/L

4. On October 23, 2007, DNR issued Kyle Westrum a Notice of Violation Letter for manure release violations associated with the October 15th and October 16th investigations. The letter also informed Mr. Westrum that these violations were being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of a pollutant to a water of the state without a permit. Mr. Westrum failed to repair or plug a broken manure transfer pipe at his facility. As a result, manure from the facility discharged to a tile intake. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 65.2(3) states that the minimum level of waste control for a confinement feeding operation shall be the retention of all wastes between periods of application. Mr. Westrum failed to properly retain manure between periods of land application. As a result, manure contaminated water was discharging to a tile intake. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.2(9) states that a person storing, handling, transporting or land applying manure from an animal feeding operation who becomes aware of a release shall notify DNR of the occurrence or release as soon as possible but not later than six hours after onset or discovery of the release. Mr. Westrum was aware that the manure transfer pipe was broken on October 8, 2007. This broken transfer pipe caused manure to discharge from the pipe. Mr. Westrum failed to notify the DNR of the discharge at the time. DNR was notified of this release on October 15, 2007 when a complaint was made. The above-mentioned facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders and Westrum agrees to do the following:

1. Pay an administrative penalty of \$5,500.00, within 60 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,500.00. The administrative penalty is determined as follows:

Economic Benefit – Failure to properly contain all manure has allowed Westrum to save time and money. It was apparent from DNR Field Office 2's visits to the facility that Westrum was not properly maintaining the manure storage structures at its facility. \$1,000.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Manure reached a tile intake and therefore, a water of the state. While the impact to the receiving stream was not measurable, the discharge would have continued if DNR had not been notified and had subsequently investigated. There were three separate manure releases that were, in essence, being ignored. Westrum's failure to report the manure releases, its failure to properly contain the manure, and the water quality violations threaten the integrity of the water quality program. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Westrum has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Kyle Westrum is aware of other DNR regulations concerning this facility and has been involved in manure management plans, earthen manure storage inspections, and manure application certification. Therefore, \$1,500.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Westrum. For that reason Westrum waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 22 day of
Oct., 2008.



KYLE WESTRUM
Westrum Farms, Inc.

Dated this 10 day of
Oct., 2008.

Facility #58962; Kelli Book, Eric Wiklund, EPA, VIII.D.1.a